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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,262	04/27/2005	John E. Walls	VMACosUSNP	7343

7590 01/16/2008
CR Miles
1 Old Town Square
Suite 200 B
Fort Collins, CO 80524

EXAMINER

KUMAR, PREETI

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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01/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/533,262	Applicant(s) WALLS ET AL.	
	Examiner Preeti Kumar	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :12/7/2007, 8/26/2005 and 4/27/2005.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, claims 28-30 in the reply filed on 10/24/2007 is acknowledged.

Non-Final Rejection

2. Claims 1-27 are cancelled in the response filed 10/24/2007. Claims 28-30 are pending for examination.

Priority

3. Acknowledgment is made of applicant's instant application is a 371 of PCT/US03/35057 11/03/2003 which claims benefit of 60/423,231 11/02/2002. It is noted the United States application was filed more than twelve months thereafter.

Information Disclosure Statement

2. The information disclosure statements (IDS) submitted on 12/7/2007, 8/26/2005 and 4/27/2005 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 29-30 recites the limitation "A method of washing hands as described in claim 11". There is insufficient antecedent basis for this limitation in the claim since original claim 11 is cancelled as per the response dated 10/24/2007 and also, original claim 11 was to a composition, never to a method.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 28-30 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over MacDonald et al. (US 7053029).

MacDonald et al. teach a hygiene teaching aid and a method of developing a hygiene habit. The hygiene teaching aid has an indicator that provides a change

detectible to a user after a period of time after dispensing has passed. The method of developing a hygiene habit includes the steps of dispensing soap and water into a user's hands, rubbing the hands together until a change detectible to the user is detected, and washing the hands with water, where the soap contains an indicator that provides the user detectible change after a period of time after dispensing the soap into the hands has passed. See abstract and col.2,ln.30-40. This teaching meets the claimed method of washing hands comprising the steps of a) applying a liquid hand soap to hands, b) combining said liquid hand soap applied to said hands with water; c) rubbing said liquid hand soap applied to said hands; and d) perceiving sensorial attributes of substances released from said capsules that rupture.

Regarding the claimed limitations to wherein said liquid soap comprises a non-aqueous carrier containing a plurality of capsules or population of capsules that rupture after a duration of time when exposed to water or discrete event occurrence, MacDonald et al. teach that the liquid hand soap contains an indicator that provides a change detectible by a user after a period of time after dispensing has passed. The change may be in color, in viscosity, in smell, temperature or even in sound. The observable change may occur in from a finite time to at most 5 minutes or more particularly about 45 seconds, or still more particularly between 15 and 35 seconds. See col.2,ln.20-30. MacDonald et al. further teach that the liquid hand soap is composed of a plurality of components (col.1,ln65-col.2,ln.15 which may be kept together by some means, such as by microencapsulation, until sufficient physical stimulus (i.e. routine handwashing, a vigorous rubbing/scrubbing together of all surfaces

of lathered hands for at least 10 seconds, followed by thorough rinsing under a stream of water") results in their effective mixing. See col.3,ln.10-15,35.

In the written description joining col3-4, MacDonald et al. illustrate an embodiment wherein the color changes and an embodiment wherein the viscosity changes. Specifically MacDonald et al. teach an indicating soap was made starting with standard colorless, over-the-counter liquid soap, antibacterial Clear Skin Cleanser, a small amount of food grade dye, in this case 0.2 weight percent of FD&C (food, drug & cosmetic) green dye number 3 was added to the liquid soap. Mixed separately were antibacterial soap and a decolorizing agent. The decolorizing agent was 1 weight percent ascorbic acid and 1 weight percent iron chloride also from Aldrich Chem. Co. When the two components are mixed in approximately equal proportions in the hand, for example, the color will initially be green. After about 30 seconds the color will gradually change to blue. The speed of the color change is controlled by the concentration of the decolorizing agent. The residual blue color is useful in indicating how thoroughly the hands have been rinsed after use.

In a viscosity changing embodiment of the invention, the same colorless liquid soap (above) was used. FD&C green dye number 3 in an amount of 0.2 weight percent and 5 weight percent of polyvinyl alcohol, was added to the soap to make a first component. In this case, a mixture of 0.2 weight percent sodium tetraborate decahydrate and 2 weight percent citric acid in liquid soap was the second component. When the two components were mixed, a gel was formed in the hand. After some time,

dependent in this case upon the concentration of the citric acid, the gel is broken down and the soap has a water-like consistency.

MacDonald et al. are silent as to the liquid hand soap comprising capsules that rupture. However, it is reasonable to presume that said limitations are encompassed by the invention of MacDonald et al. because the presumption is supported by the use of similar materials (i.e. liquid hand soap) and in the similar production steps (i.e. microencapsulation of the components making up the liquid hand soap) to produce the color changing or viscosity changing liquid hand soap upon routine method of handwashing. The burden is upon the applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed liquid hand soap comprising capsules that rupture claimed would have been provided by the process as disclosed by MacDonald et al. because MacDonald et al. teach microencapsulation of the ingredients making up the liquid hand soap.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above. Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 571-272-1320. The examiner can normally be reached on 6:30 am-2:30 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Examiner Preeti Kumar
Art Unit 1796

/PK/

/Vasu Jagannathan/
Supervisory Patent Examiner
Technology Center 1700